IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12064 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHAGANBHAI DHULABHAI VANKAR

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 12064 of 1994

MR PK Shukla for Petitioner No. 1

Mr ND Gohil, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 10/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr.Shukla for the petitioner and Mr. N.D. Gohil, the learned AGP for the

respondents. In this petition, the petitioner workman has challenged the award made by the labour court, Ahmedabad in Reference (LCA) No. 270 of 1985 dated 16th June, 1994 in so far as it relates to refusal of 50 per cent of back wages for the intervening period. Under the impugned award, the labour court has partly allowed the reference of the petitioner workman and has ordered the respondent - first party to reinstate the petitioner workman with 50 per cent of the back wages for the intervening period with cost quantified at Rs.250.00 by the labour court.

Learned advocate Mr. Shukla appearing for the petitioner workman has submitted that the labour court has committed an error in denying 50 per cent of the back wages for the intervening period. He also submitted that the labour court has erred in raising presumption though there was no evidence to that effect. He also submitted that the labour court has erred in inferring that the workman must not have remained completely unemployed in these hard days and he must have earned an amount of Rs.200.00 to Rs.250.00 by doing miscellaneous labour work. He submitted that such an inference was drawn by the labour court in absence of any evidence to that effect and in doing so, the labour court has erred. It was his submission that once the labour court has set aside the order of termination, labour court has to grant the back wages as a normal consequence of reinstatement and, therefore, to that extent, the award made by the labour court is required to be modified by awarding full back wages to the petitioner workman.

On the other hand, learned Asstt. G.P. Mr.N.D.Gohil appearing for the respondent authorities has submitted that these are the discretionary powers of the labour court to award back wages while granting reinstatement in favour of the workman. He also submitted that the question of back wages would depend upon various aspects and such aspects as well as facts and circumstances of each case. According to him, it is not rule that in each and every case, back wages has to be granted as a normal rule while setting aside the order of termination or dismissal as the case may be. According to him, the reasons assigned by the labour court for not awarding full back wages and for awarding only 50 per cent back wages for the intervening period are cogent and convincing because the inference or the presumption drawn by the labour court for refusing 50 per cent back wages is based on the principle that a person would not survive without doing anything; for surviving in these hard days, he must have done something and must

have earned something and in view of that, the award in question is quite just, proper and valid award and, therefore, this court should not exercise the extra ordinary powers under Article 227 of the Constitution of India. According to him, the reinstatement was granted by the labour court while exercising the powers under section 11-A of the Industrial Disputes Act, 1947 and in exercise of the powers under section 11-A of the ID Act, the labour court has ordered reinstatement with 50 per cent of the back wages for the intervening period and, therefore, this court may not interfere with such findings. According to him, the findings recorded by the labour court are not perverse and, therefore, this court may not interfere with the same.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question. In particular, I have considered para 9 of the award in question wherein the labour court has discussed the back wages aspect as to how much amount should be awarded to the workman while directing his reinstatement. The labour court has set aside the order of oral termination and has granted reinstatement in favour of the respondent workman with 50 per cent of the back wages on the basis of the fact that at the time when the services of the petitioner were terminated, his total salary was of Rs.400.00 per month and then the labour court has presumed that the workman must not have remained without work during such a long intervening period and must have earned at least Rs.200.00 to 250.00 by doing some miscellaneous labour work. Thus, the labour court has drawn inference of absence of complete unemployment during such a long intervening period of about 10 years and based upon such an inference,the labour court has granted only 50 per cent of the back wages for the intervening period. The labour court has also considered one more important aspect that the services of the petitioner were terminated because of the negligence and carelessness on the part of the workman and for that, services of the petitioner workman were terminated without holding departmental inquiry and that is how the order of termination was set aside by the labour court and therefore, by way of punishment also, the labour court has not granted full back wages but has granted 50 per cent of the back wages for the intervening period in exercise of the powers under section 11A of the ID Act, 1947.

The question has recently been examined by the Hon'ble apex court in the matter of RAM ASHREY SINGH AND ANOTHER AND RAM BUX SINGH AND OTHERS reported in 2003-II

LLJ page 176 wherein the Hon'ble apex court has, while considering the question of back wages, held that on reinstatement, no automatic entitlement of employee to back wages. In para 7 of the said judgment, it has been observed by the Hon'ble apex court as under:

"7. In PGI of Medical Education and Research Chandigarh v. Raj Kumar 2001-I-LLJ 546, this court found fault with the High Court in setting aside the award of the labour court which restricted the back wages to 60 per cent and directing payment of full back wages.It was observed thus at p.547 of LLJ:

'6. The labour court being the final court of facts came to a conclusion that payment of 60 % per cent would comply with the requirement of law.The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect.'

Again, at paragraph 12, this court observed at p.548 of LLJ:

'Payment of full back wages having a discretionary element involved in it has to be dealt with in the facts and circumstances of each case and no straightjacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety.'"

Considering this decision of the apex court, it is not the automatic relief for which the workman is entitled to get full back wages for the intervening period when the reinstatement has been ordered by the labour court but it depends upon the facts and circumstances of each case which is required to be justified by the workman.

This aspect has also been examined by the apex court in case of Jitendra Singh Rathor versus Shri Baidyanath Ayurved Bhavan Ltd. reported in AIR 1984 SC 976 wherein it has been held that where the tribunal

while directing reinstatement withheld payment of half of the back wages keeping in view the proved misconduct of the employer, withholding of half of the back wages in the nature of penalty, in such a case, it could not be said that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty. In para 3 and 4 of the said decision, it has been observed by the apex court as under:

"3. While discretion is vested in the Tribunal under this provision and in a given case on the facts established the tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well settled principle of law that when an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement and keeping the delinquency in view could withhold payment of a part or the whole of the back wages.In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld, it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to proved misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty."

Therefore, in view of the observations made by the Hon'ble apex court in the aforesaid two decisions and also in view of the facts and circumstances of the present case and considering the reasons assigned by the labour court in para 9 of the impugned award while considering the question of back wages, it is clear that there was allegation of negligence and carelessness on the part of the petitioner workman wherein the petitioner's services were terminated without holding any departmental inquiry against the petitioner and, therefore, in view of that, the oral order of termination was set aside by the labour court. While considering the question of back wages, the labour court has also considered the allegations of carelessness and negligence on the part of the petitioner workman over and above the

aforesaid inference and based upon such inference and considering the alleged carelessness and negligence of the workman, the labour court has granted only 50 per cent back wages for the intervening period and has not granted full back wages. Therefore, according to my opinion, the labour court has not committed any error while coming to such conclusion and while denying 50 per cent back wages to the petitioner workman. The findings given by the labour court are also not baseless or perverse but the same are cogent and convincing requiring no interference of this court and, therefore, there is no substance in this petition and the same is required to be dismissed.

In the result, for the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

Dt.10.9.2003. (H.K. Rathod,J.)

Vyas